IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TIMOTHY BIGGS Plaintiff, v. THOMAS JEFFERSON UNIVERSITY HOSPITAL Defendant.	: : : : : : : : : : :	CIVIL ACTION NO.: 13-3037

PLAINTIFF'S RESPONSE TO DEFENDANT'S
REQUEST FOR BILL OF COSTS

Plaintiff, by and through his undersigned Counsel, hereby submits the following response to Defendant's request for bill of costs.

Objection– Deposition Transcript of Plaintiff (Timothy Biggs) and Dr. Anthony DeSalvo

Defendant seeks costs for both the video recording, as well as the transcript costs for the Deposition of Plaintiff, Timothy Biggs. Plaintiff objects to the taxation of the $1,108.25 cost of the transcribed version of his deposition, which was billed *in addition to* the $550.00 cost of the video recording of the same. Several courts in the Eastern District of Pennsylvania have unequivocally stated that when it comes to taxation of fees, "defendants are not permitted to recover the costs of both transcripts and videotapes of depositions." *In re Aspartame Antitrust Litig*., 817 F. Supp. 2d 608, 617, 2011 U.S. Dist. LEXIS 118226, *15 (E.D. Pa. 2011)(citing *Stevens v. D.M. Bowman, Inc*., No. 07-2603, 2009 U.S. Dist. LEXIS 3065, at *12 (E.D. Pa. Jan. 15, 2009 and *Wesley v. Dombrowski*, No. 03-4137, 2008 U.S. Dist. LEXIS 49544, at *10 (E.D. Pa. June 25, 2008); *Herbst v. General Accident Ins. Co*., 2000 U.S. Dist. LEXIS 11952, *5 (E.D. Pa. Aug. 21, 2000)(same)(citing *Brown v. Kemper Nat'l Ins. Co*., 1998 U.S. Dist. LEXIS 12007, 1998 WL 472586, *2 (E.D. Pa. July 27, 1998); *Fitchett v. Stroehmann Bakeries, Inc.*, 1996 U.S. Dist. LEXIS 1168, 1996 WL 47977, *6-7 (E.D. Pa. Feb. 5, 1996); *Macario v. Pratt & Whitney Can.*, 1995 U.S. Dist. LEXIS 16325, at *3, 1995 WL 649160, at *2 (E.D. Pa. Nov. 1, 1995).

When this situation arises, "[a] court will allow costs for a videotape but not a transcript if the videotape was necessarily obtained for use in the trial." *In re Aspartame Antitrust Litig.*, 817 F. Supp. 2d at 617. This being the case, Defendant should not be permitted to bill for both the videotaping and transcribing of Plaintiff's deposition. As the case law above prescribes, Plaintiff should solely be billed $550.00 for the cost of the video recording, and the additional $1,108.25 cost for the transcript should be stricken.

Objection– Defendant's Trial Technology Costs

Defendant additionally seeks $6,271.00 in costs for its use of "trial support services." Trial in this case was held in technology accessible courtrooms, both of which were fully equipped with devices having the ability to digitally project, focus and zoom into each exhibit presented to the jury. Though Plaintiff's counsel used this available technology without issue, Defendant took it upon itself to contract an outside vendor to display most of the same documents with high-tech equipment in an attempt to "woo" the jury into finding in its favor[1].

This case was decided on a single count allegation of failure to accommodate under the Americans with Disabilities Act. The trial, excluding jury selection, took less than three days to present. The case did not involve any complex issues of law or evidence, and simply came down to whether the jury believed Defendant failed to accommodate Plaintiff. The technology used by Defendant, as referenced above, was in no way necessary for either the efficient presentation of

[1] Defendant used this technology for purposes such as zooming into text with graphic dialog boxes and highlighting portions of documents, lboth of which could have been done without such technology, albeit less fanciful.

evidence, nor for its comprehension by the jury, and Defendant could very easily have presented the same arguments using the technology that was already at its disposal with no additional cost.

While Defendant was well within its rights to use such additional and flashy technology to present its case at trial, Plaintiff should not be obligated to pay for such an unnecessary and costly extravagance. In fact, other courts have denied bills for such unnecessary costs in cases strikingly similar to this one, where defendants have used additional high-tech technology in lieu of the courtroom technology to impress the jury where the issues lack the complexity necessitating the same. *Hunt v. City of Portland*, 2011 U.S. Dist. LEXIS 89744, *4, 40-43, 2011 WL 3555772 (D. Or. Aug. 10, 2011) (denying costs for a "trial technology specialist and related trial support expenses," as the defendant could have used the available courtroom technology and the case lacked complexity despite an eight-day trial consisting of 25 witnesses and an expert witness). Therefore, Defendant's billing of $6,271.00 for its use of supplemental trial technology should not be taxed against Plaintiff.

Conclusion

For the reasons set forth above, Plaintiff respectfully requests that the Court disallow the taxation of Plaintiff's transcribed deposition, as well as Defendant's use of supplemental "trial support services." Accordingly, the bill of costs should be reduced to $3,776.05.

Respectfully submitted,

KARPF, KARPF & CERUTTI, P.C.

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Date: July 9, 2015

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CERTIFICATE OF SERVICE

I certify on the date set forth below that I sent Plaintiff's Response to Defendant's Bill of Costs to the following address via ECF:

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/s/ *Christine E. Burke, Esq.*
Christine E. Burke, Esq.

Dated: July 9, 2015